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April 17, 2001

**RECEIVED**

**APR 17 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

*Via Hand Delivery*

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Vox Allegany, LLC  
MM Docket No. 01-36

Dear Ms. Salas:

Vox Allegany, LLC, by its attorneys, hereby files an original and five copies of its Reply Comments in the above-referenced proceeding. Please contact the undersigned directly if there are any questions concerning this matter.

Respectfully submitted,

  
David G. O'Neil

DGO:do  
Enclosures (6)

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**RECEIVED**

**APR 17 2001**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)	)	
Table of Allotments	)	
FM Broadcast Stations	)	MM Docket No. 01-36
(Jamestown, Alfred and Canaseraga,	)	RM-10047
New York; and Du Bois, Pennsylvania)	)	

**REPLY COMMENTS OF  
VOX ALLEGANY, LLC**

Vox Allegany, LLC ("Vox Allegany"), pursuant to Section 1.420 of the Commission's Rules and by its attorneys, hereby files its Reply Comments in response to the "Comments in Opposition and Counterproposal of Pembroke Pines Elmira, Ltd." ("Pembroke Pines").<sup>1</sup> The Commission must deny the Pembroke Pines counterproposal because it proposes reference coordinates for WMHU(FM)<sup>2</sup> that do not satisfy the Commission's technical rules and is unsuitable for a tower site. The Commission should instead grant the upgrade for WMHU(FM) at the reference coordinates specified in the *NPRM* because the coordinates satisfy the Commission's technical rules, thereby permitting WMHU(FM) to provide wide area service to the public. In support thereof, the following is respectfully shown:

The *NPRM* proposes to upgrade WMHU(FM) by substituting Channel 270B1 for Channel 270A at Jamestown and modifying the authorization for WMHU(FM) accordingly. To accommodate the upgrade, channel substitutions for allotments at Alfred and Canaseraga, New York, and a change in the reference coordinates for the allotment at Du Bois, Pennsylvania are required. Vox Allegany the licensee of WMOU(FM), the station operating on the allotment for

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<sup>1</sup> The Notice of Proposed Rule Making in this proceeding authorizes the filing of Reply Comments by April 17, 2001. See *Jamestown, Alfred, and Canaseraga, New York; and Du Bois, Pennsylvania*, DA 01-336 (Chief, Allocations Branch)(released February 9, 2001) (the "NPRM"). Thus, these Reply Comments are timely filed.

<sup>2</sup> The former call sign for this station was WHUG(FM).

Du Bois, supports the proposed change in reference coordinates. The allotment for Canaseraga presently is vacant. Pembroke Pines, the licensee of WZKZ(FM), the radio station operating on the allocation for Alfred, does not oppose the proposed upgrade for WMHU(FM).

However, Pembroke Pines does oppose the proposed change in frequency for WZKZ(FM). Pembroke Pines proposes alternative reference coordinates for Jamestown, Alfred and Du Bois. Pembroke Pines claims that its proposal eliminates the necessity for changing frequencies for Alfred and Canaseraga while permitting the Commission to upgrade the facilities for WMHU(FM).

The Pembroke Pines counterproposal is defective because it does not comply with the Commission's technical rules. Pembroke Pines proposes reference coordinates for WMHU(FM) that will not enable the station to provide the required city grade signal over Jamestown, New York, the station's community of license.<sup>3</sup> The proposed reference coordinates for an allocation in a rule making proceeding must provide a city grade signal over the entire community of license, not just a portion of the community. *See Greenwood, Seneca, Aiken and Clemson, South Carolina, and Biltmore Forest, North Carolina*, 3 FCC Rcd 4108 (1988); *Laredo, Texas*, DA 00-2019 (Chief, Allocations Branch 2000); *Otsego, Michigan*, DA 00-1288 (Chief, Allocations Branch 2000); *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586 (Chief, Allocations Branch 1994). The Commission therefore must dismiss the Pembroke Pines counterproposal as defective.

The proposed reference coordinates specified in the Pembroke Pines counterproposal is unsuitable for a tower. The proposed tower site is located in an area of low elevation immediately adjacent to Lake Chautauqua, near the Chautauqua Institution, and only two miles from the community of Chautauqua. Vox Allegany would be required to construct a tower well

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<sup>3</sup> See Engineering Statement of Elmer L. Steingass at 2.

in excess of 500 feet to achieve the equivalent of 100 meters above average terrain.<sup>4</sup> The Federal Aviation Administration probably will consider the tower a VFR flyway because of the tower site's proximity to Lake Chautauqua and would prohibit the construction of the tower. The proposed tower coordinates are located in a swampy area and therefore are unsuitable for constructing a tower. The proposed tower site may be unsuitable for environmental reasons. A more than 500 foot tall tower located along the shoreline would be clearly visible from the nearby Chautauqua Institution, which appears to be listed on the National Register of Historical Places. In addition, given the proximity between the proposed tower site and the town of Chautauqua, it is unlikely that Vox Allegany would receive zoning approval for a 500-foot tower jutting up along the shoreline.<sup>5</sup> Sufficient doubt therefore exists as to the viability of the reference coordinates for a tower site that the Commission must deny the Pembroke Pines counterproposal.

Pembroke Pines preference for remaining on its present channel is insufficient justification for denying the improved public service proposed by Vox Allegany. A licensee does not have a right to operate on a specific channel. *See, e.g., Churchville and Luray, Virginia*, 5 FCC Rcd 1106 (Chief, Allocations Branch 1990). The Commission has required licensees to change frequencies when the channel change will provide improved service to the public.<sup>6</sup> The Vox Allegany proposal will permit WMHU(FM) to provide improved service. The allotment changes also will permit the ultimate licensee for Canaseraga to provide improved service to the

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<sup>4</sup> *See Id.*

<sup>5</sup> Because Pembroke Pines proposes reference coordinates for Vox Allegany that would require construction of such a massive tower, Vox Allegany submits that the Commission should require Pembroke Pines to reimburse Vox Allegany for its expenses associated with constructing a tower at this site.

<sup>6</sup> As the Commission has held on numerous occasions, the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of a new or expanded service at another community. *See Odessa and Los Ybanez, Texas*, 10 FCC Rcd 2767 (Chief, Allocations Branch 1995); *See Churchville and Luray, Virginia*, 5 FCC Rcd 1106 (Chief, Allocations Branch 1990) *Marietta, Ohio, and Ravenswood, West Virginia*, 2 FCC Rcd 4681 (Chief, Allocations Branch 1987).

community by reducing the site restriction for the channel from 10.6 kilometers to 8.8 kilometers. If the Commission adopts the Vox Allegany proposal, everyone wins and no one loses.

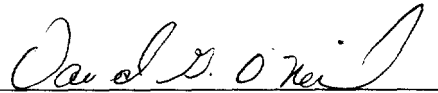
Conclusion

The Commission must deny the Pembroke Pines counterproposal because it does not comply with the Commission's Rules and proposed an unsuitable site for constructing a tower. The Commission should grant Vox Allegany's original proposal because it will provide improved service to the public.

WHEREFORE, for the foregoing reasons, Vox Allegany hereby requests that the Commission grant Vox Allegany's proposal and deny the Pembroke Pines counterproposal.

Respectfully submitted,

**VOX ALLEGANY, LLC**



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Rini, Coran & Lancellotta, P.C.  
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April 17, 2001

Its Attorneys

ENGINEERING STATEMENT IN  
SUPPORT OF REPLY COMMENTS

MM DOCKET 01-36

WMHU(FM) - JAMESTOWN, NY

Vox Allegany, LLC  
Jamestown, NY

April 16, 2001

Prepared for: Mr. John Bulmer  
Vox Allegany, LLC  
45 Park Street  
North East, PA 16428

**CARL E. SMITH CONSULTING ENGINEERS**

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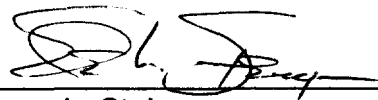
Fig. 1.1 - Topographic Map Showing Proposed Site  
(WZKZ Counterproposal)

ENGINEERING AFFIDAVIT


State of Ohio                    )  
  ) ss:  
County of Summit                )

Elmer L. Steingass, being duly sworn, deposes and states that he is a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Vox Allegany, LLC to prepare the attached "Engineering Statement in Support of Reply Comments - MM Docket 01-36 - WMHU(FM) - Jamestown, NY."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Elmer L. Steingass

Subscribed and sworn to before me on **April 16, 2001**.

  
\_\_\_\_\_  
Notary Public

/SEAL/

NANCY A. ADAMS, Notary Public  
Residence - Cuyahoga County  
State Wide Jurisdiction, Ohio  
My Commission Expires Sept. 5, 2005



## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Vox Allegany, LLC, licensee of Radio Station WMHU(FM) - Jamestown, New York and proponent of the proposal in MM Docket 01-36 to upgrade WMHU to a Class B1 facility. This rulemaking proceeding proposes to substitute Channel 270B1 for Channel 270A in Jamestown, New York for use by WMHU. In order to accommodate the proposed WMHU upgrade, this proceeding also proposes the substitution of Channel 246A for Channel 270A in Alfred, New York for use by WZKZ(FM) to eliminate a short spacing between the proposed WMHU facilities and WZKZ. Additionally, it is also proposed to substitute Channel 270A for the vacant allotment on Channel 246A in Canaseraga, New York to accommodate the channel substitution in Alfred. Finally, it is also necessary to specify new reference coordinates for Channel 271B in Du Bois, Pennsylvania to eliminate the short spacing between the proposed Channel 270B1 allotment in Jamestown and co-owned WMOU-FM, which occupies the Du Bois allotment.

The licensee of WZKZ filed comments in this proceeding. The WZKZ comments include a counterproposal that would ostensibly eliminate the need for WZKZ to move from Channel 270A to Channel 246A. Instead, the WZKZ counterproposal proposes alternate reference coordinates for the proposed Channel 270B1 allotment in Jamestown in conjunction with the relocation of the reference coordinates for Channel 270A in Alfred to permit WMHU to be upgraded to a Class B1 facility without requiring WZKZ to change frequency. While this alternate proposal would still require a change in the reference coordinates for Channel 271B in Du Bois, it would not require the channel substitution in Canaseraga.

The WZKZ counterproposal is fatally flawed, however, for two reasons. First, the alternate reference coordinates for Channel 270B1 in Jamestown will not permit the required city grade coverage to be provided to all of Jamestown. Furthermore, these alternate reference coordinates are located in an area which is not suitable for construction of a tower of adequate height to implement Class B1 operation for WMHU.

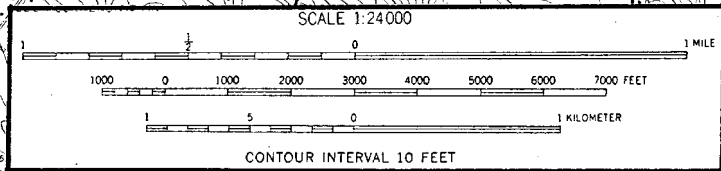
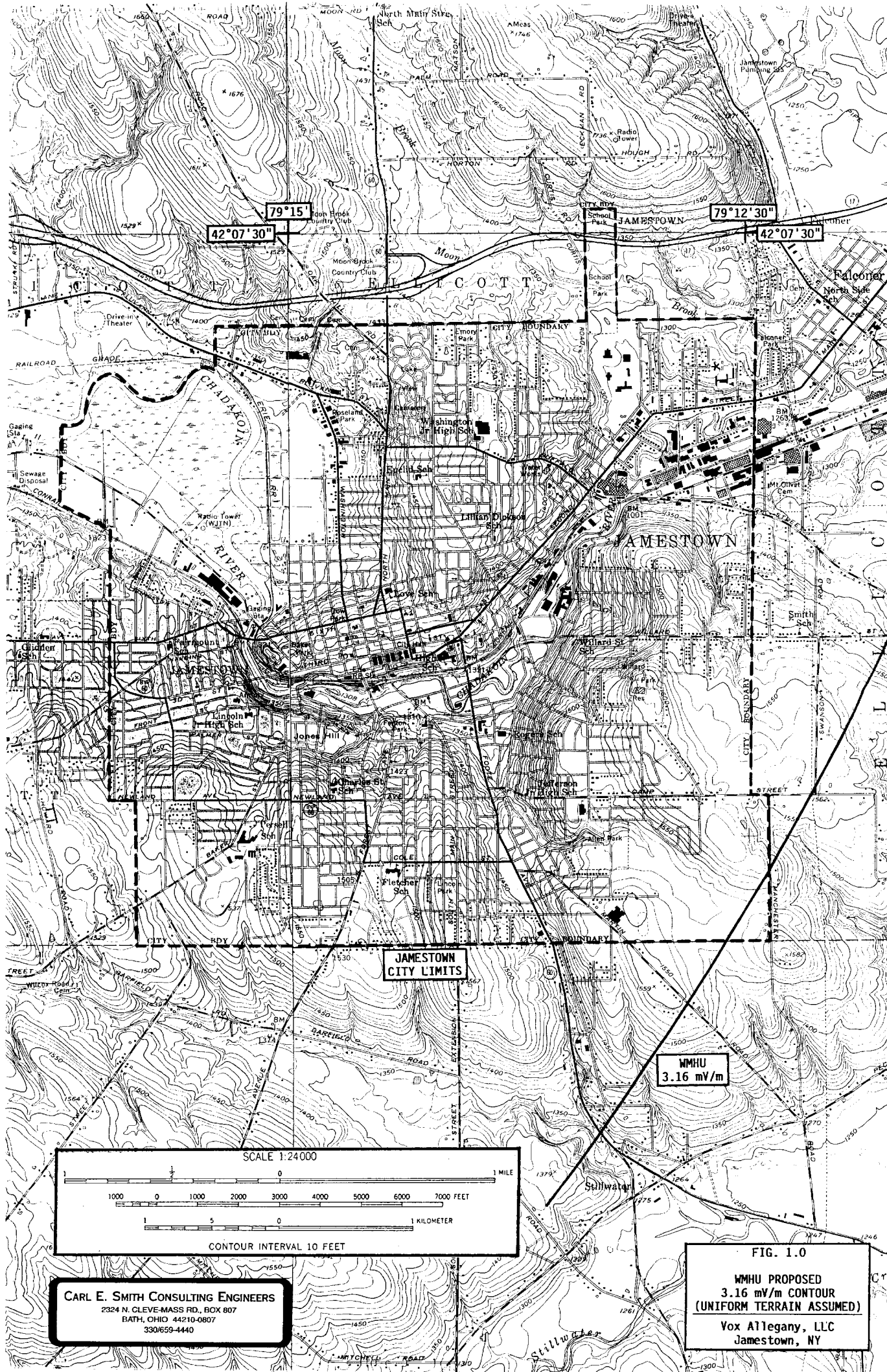
Figure 1.0 is a detailed map exhibit showing an expanded view of a portion of the predicted WMHU 3.16 mV/m contour for Class B1 operation from the alternate reference coordinates proposed by WZKZ in relation to the city limits of Jamestown. As required at the allotment stage, this contour was projected assuming uniform terrain and operation with maximum Class B1 facilities of 25 kilowatts at 100 meters above average terrain over the arc toward Jamestown. As shown in this figure, Class B1 operation from the alternate reference coordinates proposed by WZKZ will fail to provide 3.16 mV/m service to all of Jamestown, in direct contravention of Section 73.315(a) of the FCC Rules. Based solely upon this information, the WZKZ counterproposal is defective and must be dismissed without further consideration, since applicable FCC policy requires that all counterproposals be complete and technically valid when they are filed and provides no opportunity to cure defects in such counterproposals after the filing deadline.

Figure 1.1 is a portion of a USGS topographic map showing the location of the alternate reference coordinates proposed by WZKZ for Channel 270B1 in Jamestown. As shown in this figure, this proposed site is located in an area of low elevation immediately adjacent to Lake Chautauqua, on its western shore, approximately two miles south of the community of Chautauqua and the world renowned Chautauqua Institution. Achieving an antenna height of 100 meters above average terrain from this site would

site would require an antenna height of 516' AGL, which would require the construction of a tower standing well in excess of 500' above ground. As a prominent landmark, however, it is likely that the FAA would consider the shore of Lake Chautauqua to be a VFR flyway, which would prohibit the construction of a tower exceeding 500' AGL within two statute miles of this shoreline. Accordingly, even if the alternate reference coordinates proposed for Channel 270B1 by WZKZ had not been found to be unacceptable for other reasons, this counterproposal should be found to be unacceptable because of the fact that the site location is not suitable for the construction of a tower of adequate height to achieve the proposed Class B1 facilities.

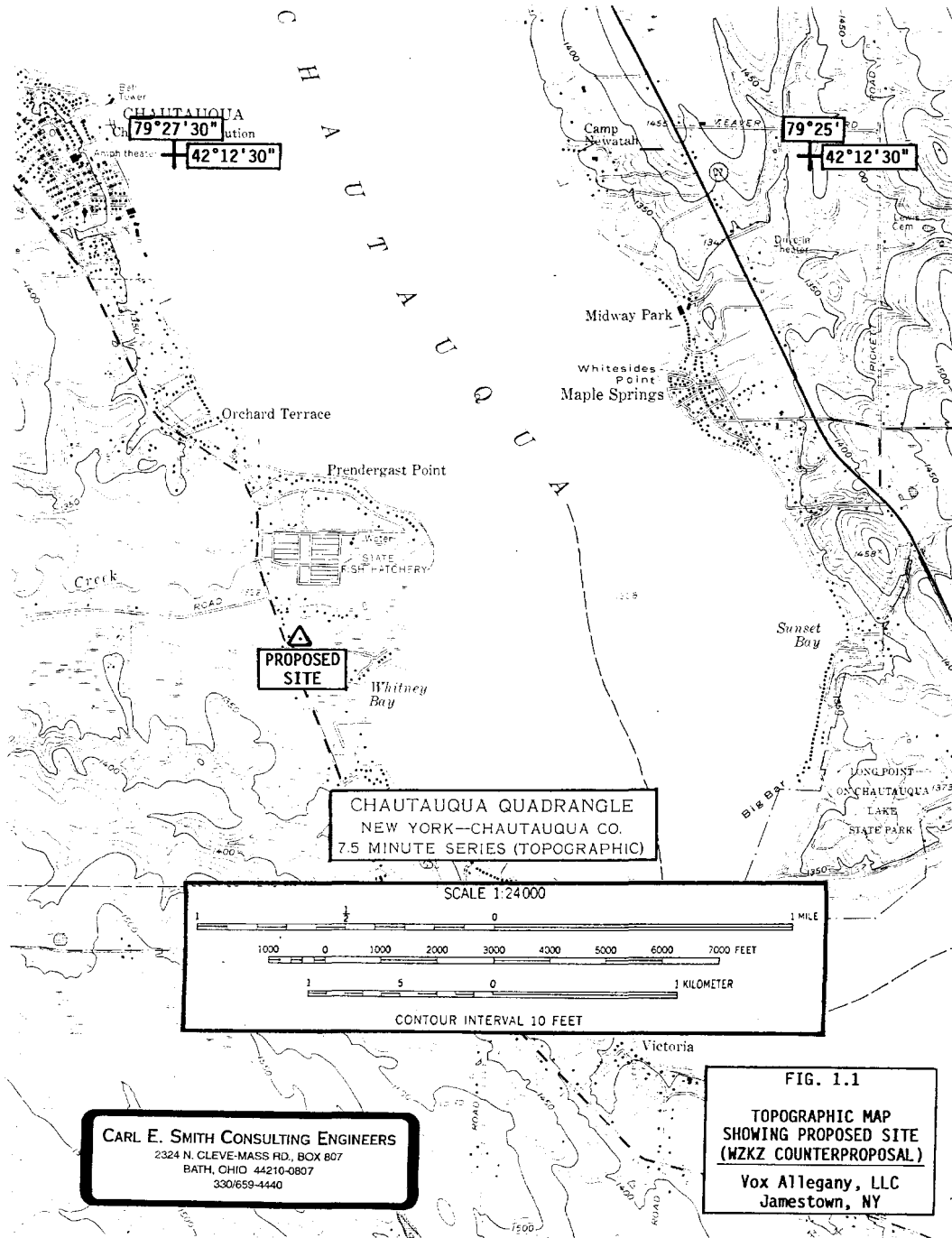
It also appears likely that this proposed alternate site is also unsuitable for tower construction for environmental reasons. The Chautauqua Institution appears to be listed on the National Register of Historic Places. A 500 foot, or taller, tower located at the alternate reference coordinates proposed by WZKZ would be clearly visible from the Institution, raising serious questions regarding the suitability of this proposed alternate site for tower construction. Additionally, a review of this map exhibit appears to indicate that these proposed alternate reference coordinates are located in a swampy area. This once again raises questions regarding the suitability of this site as a result of the numerous restrictions which are applicable to tower construction in a wetlands area. Based on the above information, it is obvious that this proposed alternate reference site for WMHU is not suitable for the construction of a tower to accommodate the proposed Class B1 upgrade for WMHU.

In conclusion, the counterproposal in MM Docket 01-36 filed by the licensee of WZKZ must be dismissed without further consideration.



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330/659-4440

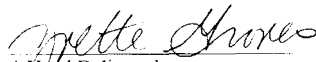
FIG. 1.0  
WMHU PROPOSED  
3.16 mV/m CONTOUR  
(UNIFORM TERRAIN ASSUMED)  
Vox Allegany, LLC  
Jamestown, NY



I, Yvette Graves, a secretary in the law firm of Rini, Coran & Lancellotta, P.C., do hereby certify that on this 17<sup>th</sup> day of April, 2001, I caused copies of the foregoing "Reply Comments of Vox Allegany, LLC" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

\*Sharon McDonald  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Harry F. Cole, Esq.  
Bechtel & Cole, Chartered  
1901 L Street, NW  
Suite 250  
Washington, DC 20036  
(Counsel for Pembroke Pines Elmira, Ltd.)

  
\* Hand Delivered